



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0203; FRL– 10000-75-Region 4]

Air Quality Plans; Tennessee; Infrastructure Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) submission, provided by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated September 13, 2018, for inclusion into the Tennessee SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. TDEC certified that the Tennessee SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Tennessee. EPA is proposing to determine that portions of Tennessee's SIP submission satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2019-0203 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, 30303-8960. Ms. Bell can be reached via electronic mail at bell.tiereny@epa.gov or via telephone at (404) 562-9088.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On October 1, 2015 (published October 26, 2015, *see* 80 FR 65292), EPA promulgated a revised primary and secondary NAAQS for ozone revising the 8-hour ozone NAAQS from 0.075 parts per million to a new more protective level of 0.070 ppm. Pursuant to section 110(a)(1) of

the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP.” States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

This action is proposing to approve Tennessee’s September 13, 2018,² revision submitted to EPA through TDEC for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS, with the exception of the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance in other states, and the prevention of significant deterioration (PSD) provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J). With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I) and the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), EPA will address these in separate rulemaking actions.

II. What Elements are Required Under Sections 110(a)(1) and 110(a)(2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may

¹ In these infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

² The September 13, 2018, SIP submission submitted by TDEC was received by EPA on September 17, 2018.

prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.³

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are summarized in section IV, below, and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."⁴

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

³ Throughout this rulemaking, unless otherwise indicated, the term "Tennessee Air Pollution Control Regulations" or "Regulation" indicates that the cited regulation has been approved into Tennessee's federally-approved SIP. The term "Tennessee Annotated Code", or "TCA", indicates cited Tennessee state statutes, which are not a part of the SIP unless otherwise indicated.

⁴ Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These elements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment permitting requirements of 110(a)(2)(C).

- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources⁵
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas⁶
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

⁵ As mentioned above, the Part D permit program for construction and modification of stationary sources is not relevant to this proposed rulemaking.

⁶ As also mentioned above, this element is not relevant to this proposed rulemaking.

III. What is EPA’s Approach to the Review of Infrastructure SIP Submissions?

EPA is acting upon the SIP submission from Tennessee that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 8-hour ozone NAAQS. Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS, commonly referred to as an “infrastructure SIP.” These infrastructure SIP submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁷ Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.⁸ EPA has other authority to address any issues concerning a state’s implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. What is EPA’s Analysis of How Tennessee Addressed the Elements of the Sections 110(a)(1) and (2) “Infrastructure” Provisions?

⁷ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA’s prior action on Tennessee’s infrastructure SIP to address the 2010 Nitrogen Dioxide NAAQS (81 FR 45438 (July 14, 2016)).

⁸ See *Mont. Env’tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

The Tennessee infrastructure SIP submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission Limits and Other Control Measures*: Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Tennessee's SIP are relevant to emission limits and other air quality control measures. These regulations include enforceable emission limitations and other control measures within the following rule chapters: SIP-approved Tennessee Air Pollution Control Regulations (TAPCR) 1200-03-03, *Ambient Air Quality Standards*, 1200-03-04, *Open Burning*; 1200-03-06, *Non-process Emission Standards*; 1200-03-07, *Process Emission Standards*; 1200-03-09, *Construction and Operating Permits*; 1200-03-18, *Volatile Organic Compounds*; 1200-03-21, *General Alternate Emission Standards*; 1200-03-24, *Good Engineering Practice Stack Height Regulations*; and 1200-03-27, *Nitrogen Oxides*. Collectively, these regulations establish enforceable emissions limitations and other control measures, means, or techniques for activities that contribute to ozone concentrations in the ambient air, and provide authority for TDEC to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA. Additionally, State statutes established in the Tennessee Air Quality Act and adopted in the Tennessee Code Annotated (TCA) section 68-201-105(a), *Powers and duties of board -- Notification of vacancy -- Termination due to vacancy*, provide the Board and TDEC's Division of Air Pollution Control the authority to take actions in support of this infrastructure element such as issue permits, promulgate regulations, and issue orders to

implement the Tennessee Air Quality Act and the CAA, as relevant. EPA has made the preliminary determination that the provisions contained in these State regulations and State statute satisfy Section 110(a)(2)(A) for the 2015 8-hour ozone NAAQS in the State.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System*: Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. TCA 68-201-105(b)(4) gives TDEC the authority to provide technical, scientific, and other services as may be required to implement the provisions of the Tennessee Air Quality Act. Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR Parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the agency's ambient monitors and auxiliary support equipment.⁹

On July 10, 2018, Tennessee submitted its most recent plan to EPA, which was approved by EPA on September 19, 2018. Tennessee's monitoring network plan can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2019-0203. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the ambient air quality monitoring and data availability requirements related to the 2015 8-hour ozone NAAQS.

⁹The annual network plans are approved by EPA in accordance with 40 CFR Part 58, and, on occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR Part 58.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or*

Modification of Stationary Sources: This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (i.e., the major source PSD program). TDEC's 2015 8-hour ozone NAAQS infrastructure SIP submission cites a number of SIP provisions to address these requirements. EPA's rationale for its proposed action regarding each sub-element is described below.

Enforcement: The following SIP-approved regulation provides TDEC with authority for enforcement of ozone emission limits and control measures. TAPCR 1200-03-13-.01, *Violation Statement*, states that, "Failure to comply with any of the provisions of these regulations shall constitute a violation thereof and shall subject the person or persons responsible therefore to any and all the penalties provided by law." Also note, under TCA 68-201-116, *Orders and assessments of damages and civil penalty--Appeal*, the State's Technical Secretary is authorized to issue orders requiring correction of violations of any part of the Tennessee Air Quality Act, or of any regulation promulgated under this State statute. Violators are subject to civil penalties of up to \$25,000 per day for each day of violation and for any damages to the State resulting from the violations.

Preconstruction PSD Permitting for Major Sources: With regard to section 110(a)(2)(C) related to the programs for preconstruction PSD permitting for major sources, EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Tennessee's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2015 8-hour ozone NAAQS. TAPCR 1200-03-09-.01, *Construction Permits*, and TAPCR 1200-03-09-.03, *General Provisions*, collectively govern the preconstruction permitting of modifications and construction of minor stationary sources, and minor modifications of major stationary sources.

EPA has made the preliminary determination that Tennessee’s SIP is adequate for program enforcement of control measures, and regulation of minor sources and modifications related to the 2015 8-hour ozone NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport*: Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (“prong 1”) and interfering with maintenance of the NAAQS in another state (“prong 2”). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”).

110(a)(2)(D)(i)(I) – prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA

will consider these requirements in relation to Tennessee's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II) – prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Tennessee's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

110(a)(2)(D)(i)(II) – prong 4: Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. This requirement is satisfied for any relevant NAAQS when the state has a fully approved regional haze SIP. Tennessee's submission relied on the State's regional haze SIP submission to address the prong 4 requirements of section 110(a)(2)(D)(i) for the 2015 8-hour ozone NAAQS. EPA approved Tennessee's regional haze SIP on September 24, 2018 (83 FR 48237). EPA's approval of Tennessee's regional haze SIP therefore ensures that emissions from Tennessee are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS. Thus, EPA has made the preliminary determination that Tennessee's infrastructure SIP submissions for the 2015 8-hour ozone NAAQS meets the requirements of prong 4 of section 110(a)(2)(D)(i)(II).

5. 110(a)(2)(D)(ii): *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. TAPCR 1200-03-09-3.04(4)(l)2, *General Provisions*, requires the permitting authority to notify air agencies whose areas may be affected by emissions from a source, which satisfies CAA section 126(a). Additionally, Tennessee does not have any pending obligation under sections 115 or 126(b) of

the CAA relating to international or interstate pollution abatement. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2015 8-hour ozone NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Tennessee's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii). EPA's rationale for today's proposal respecting each element of 110(a)(2)(E) is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), TCA 68-201-105, *Powers and duties of board -- Notification of vacancy -- Termination due to vacancy*, gives the Board the power and duty to promulgate rules and regulations to implement the Tennessee Air Quality Act. The Board may define ambient air quality standards, set emission standards, set forth general policies or plans, establish a system of permits, and identify a schedule of fees for review of plans and specifications, issuance or renewal of permits or inspection of air contaminant sources.

TAPCR 1200-03-26, *Administrative Fees Schedule*, establishes construction fees, annual emission fees, and permit review fees sufficient to supplement existing State and Federal funding and to cover reasonable costs associated with the administration of Tennessee's air pollution control program. These costs include costs associated with the review of permit applications and reports, issuance of permits, source inspections and emission unit observations, review and evaluation of stack and/or ambient monitoring results, modeling, and costs associated with enforcement actions.

TCA 68-201-115, *Local pollution control programs -- Exemption from state supervision - - Applicability of part to air contaminant sources burning wood waste -- Open burning of wood waste*, states that "Any municipality or county in this state may enact, by ordinance or resolution respectively, air pollution control regulations not less stringent than the standards adopted for the state pursuant to this part, or any such municipality or county may also adopt or repeal an ordinance or resolution which incorporates by reference any or all of the regulations of the board, or any federal regulations including any changes in such regulations, when such regulations are properly identified as to date and source." Before such ordinances or resolutions become effective, the municipality or county must receive a certificate of exemption from the Board to enact local regulations in the State. In granting any certificate of exemption, the State of Tennessee reserves the right to enforce any applicable resolution, ordinance, or regulation of the local program.

TCA 68-201-115 also directs TDEC to "frequently determine whether or not any exempted municipality or county meets the terms of the exemption granted and continues to comply with this section." If TDEC determines that the local program does not meet the terms of

the exemption or does not otherwise comply with the law, the Board may suspend the exemption in whole or in part until the local program complies with the State standards.

As evidence of the adequacy of TDEC's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Tennessee on March 25, 2019, outlining section 105 grant commitments and the current status of these commitments for fiscal year 2018. The letter EPA submitted to Tennessee can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2019-0203. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Tennessee satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2018, therefore Tennessee's grants were finalized and closed out. EPA has made the preliminary determination that Tennessee has adequate resources and authority for implementation of the 2015 8-hour ozone NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP contain requirements providing that: (a)(1) the majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. Section 110(a)(2)(E)(ii) obligations and the requirements of CAA section 128 are met in Tennessee Regulation 0400-30-17, *Conflict of Interest*. Under this regulation, the Board has authority over air permits and enforcement orders and is required to determine annually and after receiving a new member that at least a majority of its members represent the public interest and do not derive any significant portion of income from persons subject to such permits and

enforcement orders. Further, the Board cannot act to hear contested cases until it has determined it can do so consistent with CAA section 128. The regulation also requires TDEC's Technical Secretary and Board members to declare any conflict-of-interest in writing prior to the issuance of any permit, variance or enforcement order that requires action on their part.

EPA has made the preliminary determination that Tennessee's SIP adequately addresses the requirements of section 128, and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Therefore, EPA is proposing to approve Tennessee's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting*: Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. EPA's rules regarding how SIPs need to address source monitoring requirements at 40 CFR 51.212 require SIPs to exclude any provision that would prevent the use of credible evidence of noncompliance. TDEC's infrastructure SIP submission identifies TAPCR 1200-03-10, *Required Sampling, Recording, and Reporting*, which gives the State's Technical Secretary the authority to monitor emissions at stationary sources, and to require these sources to conduct emissions monitoring and to submit periodic emissions reports. This rule requires owners or operators of stationary sources to monitor emissions, submit periodic reports

of such emissions and maintain records as specified by various regulations and permits. The monitoring data collected, and records of operations serve as the basis for a source to certify compliance and can be used by Tennessee as direct evidence of an enforceable violation of the underlying emission limitation or standard.

Additionally, Tennessee is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI) pursuant to Subpart A to 40 CFR Part 51 - “Air Emissions Reporting Requirements.” The NEI is EPA’s central repository for air emissions data. Specifically, all states are required to submit a comprehensive emission inventory every three years and report emissions for certain larger sources annually through EPA’s online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them – nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants.

The most recently published triennial compiled emissions information is available as part of the 2014 NEI. EPA has made the preliminary determination that Tennessee’s SIP and practices are adequate for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS.

Regarding credible evidence, TAPCR 1200-3-10-.04, *Sampling, Recording, and Reporting Required for Major Stationary Sources*, states that: “the Technical Secretary is authorized to require by permit condition any periodic or enhanced monitoring, recording and reporting that he deems necessary for the verification of the source's compliance with the applicable requirements as defined in paragraph 1200-03-09-.02(11).” TDEC states that the Tennessee SIP does not preclude the use of credible evidence and directs TDEC to give due

consideration of all pertinent facts. Additionally, EPA is not aware of any SIP provision preventing the use of credible evidence. EPA has made the preliminary determination that Tennessee's SIP and practices are adequate for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G): *Emergency Powers*: Section 110(a)(2)(G) of the Act requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Tennessee's emergency powers are outlined in TAPCR 1200-03-15, *Emergency Episode Plan*, which establishes the criteria for declaring an air pollution episode (air pollution alert, air pollution warning, or air pollution emergency), specific emissions reductions for each episode level, and emergency episode plan requirements for major sources located in or significantly impacting a nonattainment area. Additional emergency powers are codified in TCA 68-201-109, *Emergency Stop Orders for Air Contaminant Sources*. Under TCA 68-201-109, if the Commissioner of TDEC finds that emissions from the operation of one or more sources are causing imminent danger to human health and safety, the Commissioner may, with the approval of the Governor, order the source(s) responsible to reduce or discontinue immediately its (their) air emissions. Additionally, this State law requires a hearing to be held before the Commissioner within 24 hours of any such order.

Regarding the public welfare and environment, TCA 68-201-106, *Matters to be considered in exercising powers*, states that "In exercising powers to prevent, abate and control air pollution, the board or department shall give due consideration to all pertinent facts, including, but not necessarily limited to: (1) The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the

people...” Also, TCA 68-201-116, *Orders and assessments of damages and civil penalty Appeal*, provides in subsection (a) that if the Tennessee Technical Secretary discovers that any State air quality regulation has been violated, the Tennessee Technical Secretary may issue an order to correct the violation, and this order shall be complied with within the time limit specified in the order. EPA has made the preliminary determination that Tennessee’s SIP and practices are adequate for emergency powers related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Tennessee’s infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) SIP Revisions: Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements.

As previously discussed, TDEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Tennessee. Specifically, Section 68-201-105(a) of the Tennessee Air Quality Act authorizes the Board to promulgate rules and regulations to implement this State statute, including setting and implementing ambient air quality standards, emission standards, general policies or plans, a permits system, and a schedule of fees for review of plans and specifications, issuance or renewal of permits, and inspection of sources. EPA has made the preliminary determination that Tennessee’s SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee’s

infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and*

Visibility Protection: EPA is proposing to approve Tennessee's infrastructure SIP submission for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, and the public notification requirements of section 127. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to meet the requirements of section 121 relating to consultation with local governments, designated organizations, and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements. TAPCR 1200-03-34, *Conformity*, as well as the State's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. TAPCR 1200-03-34 provides for interagency consultation on transportation and general conformity issues. Tennessee adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. These consultation procedures were developed in coordination with the transportation partners in the State and are consistent with the approaches used for development of mobile inventories for SIPs. Required partners covered by Tennessee's consultation procedures include Federal, state, and local transportation and air quality agency officials. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with government officials related to the 2015 8-hour ozone

NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

Public notification: With respect to public notification, section 110(a)(2)(J) of the CAA requires states to notify the public of NAAQS exceedances and associated health hazards, and to enhance public awareness of measures that can prevent such exceedances. These requirements are met through the State's existing Air Quality Index and Air Quality Forecasting programs, which provide a method to alert the public if any NAAQS is exceeded in an area. Additionally, the State's annual monitoring plan update is sent out each year for public review and comment. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), EPA is not proposing any action in this rulemaking. EPA will consider these requirements in relation to Tennessee's 2015 8-hour ozone NAAQS infrastructure submission in a separate rulemaking.

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such, Tennessee's infrastructure SIP submission related to the 2015 8-hour ozone NAAQS does not

address the visibility protection element of section 110(a)(2)(J).

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section

110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made. Tennessee states that attainment demonstrations submitted to EPA will provide any required air quality modeling, which will comply with EPA's final guidance on the use of models and will use the latest methods and techniques. Tennessee cites to TCA 68-201-105(b)(7), which authorizes TDEC to develop plans for a comprehensive air pollution control program for the State and provide technical, scientific, and other services to develop such plans, and notes that air quality modeling is part of the scientific and technical support for developing SIPs. Tennessee also states that it has personnel with training and experience to conduct dispersion modeling consistent with models approved by EPA protocols. Additionally, Tennessee participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, Tennessee's air quality regulations and practices demonstrate that TDEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting fees:* Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required

under the CAA, a fee sufficient to cover: (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

In Tennessee, funding for review of PSD and NNSR permits comes from permit-specific fees that are charged to new applicants and from annual emission fees charged to existing title V emission sources that are applying for major modifications under PSD or NNSR. The cost of reviewing, approving, implementing, and enforcing PSD and major NNSR permits are covered under the following State regulations: 1) TAPCR 1200-03-26-.02(5) requires each new major stationary source to pay a construction permit application filing/processing fee and 2) TAPCR 1200-03-26-.02(9), *Annual Emission Fees for Major Sources*,¹⁰ mandates that existing major stationary sources pay annual title V emission fees, which are used to cover the permitting costs for any new construction or modifications at these facilities as well as implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Tennessee adequately provides for permitting fees related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/participation by affected local entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local

¹⁰ Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

political subdivisions affected by the SIP. TCA 68-201-105, *Powers and duties of board Notification of vacancy Termination due to vacancy*, authorizes and requires the Board to promulgate rules and regulations under the provisions of the State's Uniform Administrative Procedures Act. TCA 4-5-202, *When hearings required*, requires agencies to precede all rulemaking with a notice and public hearing, except for exemptions. TCA 4-5-203, *Notice of hearing*, states that whenever an agency is required by law to hold a public hearing as part of its rulemaking process, the agency shall: "(1) Transmit written notice of the hearings to the secretary of state for publication in the notice section of the administrative register web site... and (2) Take such other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the proposed rulemaking." TCA 68-201-105(b)(7) authorizes and requires TDEC to "encourage voluntary cooperation of affected persons or groups in preserving and restoring a reasonable degree of air purity; advise, consult and cooperate with other agencies, persons or groups in matters pertaining to air pollution; and encourage authorized air pollution agencies of political subdivisions to handle air pollution problems within their respective jurisdictions to the greatest extent possible and to provide technical assistance to political subdivisions..." TAPCR 1200-03-34, *Conformity*, requires interagency consultation on transportation and general conformity issues. Additionally, TDEC has, in practice, consulted with local entities for the development of its transportation conformity SIP and has worked with the FLMs as a requirement of EPA's regional haze rule. EPA has made the preliminary determination that Tennessee's SIP and practices adequately demonstrate consultation with affected local entities related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Tennessee's infrastructure SIP submission with respect to section 110(a)(2)(M).

V. Proposed Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(I) and (II) (prongs 1 and 2) pertaining to the contribution to nonattainment or interference with maintenance in other states and PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J), EPA is proposing to approve Tennessee's September 13, 2018, infrastructure submission for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve Tennessee's infrastructure SIP submission for the 2015 8-hour ozone NAAQS because the submission is consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not propose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 23, 2019.

Mary S. Walker,

Regional Administrator,

Region 4.

[FR Doc. 2019-21862 Filed: 10/8/2019 8:45 am; Publication Date: 10/9/2019]